

AMERICAN ARBITRATION ASSOCIATION

IN THE MATTER OF:

**FRATERNAL ORDER OF POLICE,
LODGE # 5**

AND

CITY OF PHILADELPHIA

**Re: Discharge of James Timms
AAAA Case No. 14-20-1300-0192 CN**

OPINION AND AWARD OF ARBITRATOR

Appearances:

For the FOP: Marc L. Gelman, Esq.

For the City: Duncan M. Lloyd, Esq.

Arbitrator: Thomas G. McConnell Jr.

PROCEDURAL HISTORY

This is a grievance arbitration proceeding involving the Fraternal Order of Police, Lodge No. 5 (FOP) and the City of Philadelphia (City). A hearing was held on December 21, 2015, at which time the parties were given a full opportunity to present their cases. A stenographic transcript of the hearing was prepared, and the record was deemed closed on January 14, 2016.

ISSUES

The parties were able to stipulate to the issues in this proceeding: Whether the City had just cause to discharge the grievant? If not, what shall the remedy be?

PROFFERED CHARGES

ARTICLE I

Conduct Unbecoming

SECTION 1-§026-10

Engaging in any action that constitutes the commission of a felony or Misdemeanor which carries a potential sentence of more than one (1) Year. Engaging in any action that constitutes an intentional violation Of Chapter 39 of the Crimes Code (relating to Theft and Related Offenses). Also includes any action that constitutes the commission of an equivalent offense in another jurisdiction, state or territory. Neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action in such matters.

SPECIFICATION

In that on Wednesday, January 2, 2013, approximately 11:20 PM, while off duty, you were involved in a domestic dispute with your wife, off duty Philadelphia Police Officer M [REDACTED] J [REDACTED], and your daughter, K [REDACTED] T [REDACTED] inside your residence located in the [REDACTED] [REDACTED]. During the incident, K [REDACTED] T [REDACTED] reported that she observed you punch M [REDACTED] J [REDACTED] in the face multiple times as she lay on the kitchen floor and slam M [REDACTED] J [REDACTED]'s head on the floor twice. M [REDACTED] J [REDACTED] sustained a laceration to her upper lip and two broken upper front teeth. When K [REDACTED] T [REDACTED] tried to assist her mother upstairs, you

pushed K [REDACTED] T [REDACTED] down, repeatedly poked her in the forehead with your finger and warned both women, "I am going to kill you. I am going kill you." M [REDACTED] J [REDACTED] and K [REDACTED] fled from the residence, and you obtained M [REDACTED] J [REDACTED] s city issued Glock 9 MM semi-automatic service pistol and discharged one round into the first floor ceiling. An Affidavit of Probable Cause for Arrest Warrant was approved by ADA James Carpenter, Chief, Family Violence & Sexual Assault Unit, for your Arrest.

WITNESS

Lieutenant Steve Nolan #386, Internal Affairs Division

ARTICLE VI

Disobedience

SECTION 6-§008-10

Discharging, using, displaying or improper handling of a firearm while not in accordance to Departmental Policy

SPECIFICATION

In that on Wednesday, January 2, 2013, approximately 11:20 PM, while off duty, you were involved in a domestic dispute with your wife, off duty Philadelphia Police Officer M [REDACTED] J [REDACTED] and your daughter, K [REDACTED] T [REDACTED], inside your residence located in the [REDACTED]. During this incident, you obtained M [REDACTED] J [REDACTED] s City issued Glock 9MM semi-automatic service pistol and intentionally discharged one round into the first floor ceiling. The projectile went through the first floor ceiling and lodged in the second floor ceiling. There were no reported injuries as a result of the police firearm charge.

WITNESS

Lieutenant Steve Nolan #386, Internal Affairs Division

Directive # 10

Discharge of Firearms by Police Personnel

Section III-A-1-a and Section III-A-1-b

The discharge of any firearm, whether accidental or intentional, by sworn personnel on-duty or off-duty (except at a bona fide pistol range or lawfully hunting game) will be reported as follows: The officer who fired will immediately notify Police Radio of the occurrence and provide same with pertinent information regarding the need for supervisory personnel and emergency equipment, if required; and inform the first supervisor on the scene of the location of the crime scene(s) and the general circumstances relative to the preservation and collection of physical evidence.

FACTUAL BACKGROUND AND PROFFERED EVIDENCE

Initial Police Response to 911 Call

On January 2, 2013, Sergeant L [REDACTED] A [REDACTED] responded to a call regarding an incident on [REDACTED] in Philadelphia. D [REDACTED] B [REDACTED] a neighbor of Officer James Timms, the grievant in this matter, reported that there was an ongoing domestic dispute at the Timms' residence. While the neighbor was on the telephone, reporting the dispute, a gunshot went off in the Timms residence.

Upon arriving at the scene, Sergeant A [REDACTED] met with Ms. B [REDACTED] and B [REDACTED] verified that she had heard a gunshot, and that James Timms was a police officer who lived next store to her where the sound of the gunshot appeared to come from. Sergeant A [REDACTED] then went to Officer Timms' residence, and knocked on the door. Four other officers were present with Sergeant A [REDACTED]. Officer Timms then answered the door, at which time Sergeant A [REDACTED] noticed that his white T-shirt had blood on it and was ripped. Sergeant A [REDACTED] asked if anyone had been shot and whether Officer Timms had fired a weapon. Officer Timms responded, "no," to both questions. Officer Timms also stated that no one else in the house had fired a weapon. Sergeant A [REDACTED] then asked to view any weapons Officer Timms had in the house, including his service weapon. Officer Timms provided the sergeant with his service weapon, and three or four other guns that Timms owned. Sergeant A [REDACTED] determined that none of these weapons had been discharged.

Upon coming back downstairs, after checking the weapons, one officer noticed that there was a bullet hole in the ceiling. Sergeant A [REDACTED] and Officer B [REDACTED] went back upstairs and discovered that the bullet had gone through the ceiling. Sergeant A [REDACTED] and the other officers then discovered that this bullet was discharged from the service

weapon of M [REDACTED] J [REDACTED], Officer Timms' wife and a police officer as well. At some point just after the bullet hole was discovered, Officer Timms became hysterical, and indicated that he was going to commit suicide. Sergeant A [REDACTED] then fearing for the safety of all present, had Officer Timms handcuffed. Sergeant A [REDACTED] then called in a report to Lieutenant S [REDACTED] and also called Internal Affairs and night command.

Sergeant A [REDACTED] testified that, at some point in this process, Officer J [REDACTED] came to the residence. Sergeant A [REDACTED] noticed that she had a "busted lip" and that she appeared to be "very intoxicated." Sergeant A [REDACTED] interviewed Officer J [REDACTED]. It was at that point that Sergeant A [REDACTED] asked Officer J [REDACTED] for the location of her service weapon, which was hanging on a banister, and covered by clothing. Upon checking that weapon, the officers discovered that it had been discharged. At around that time, Lieutenant Nolan from Internal Affairs showed up. Sergeant A [REDACTED] explained the course of events to Lieutenant Nolan, handed the guns to the lieutenant, and at Nolan's direction A [REDACTED] transferred Timms to Internal Affairs.

On cross-examination, Sergeant A [REDACTED] testified that, in his initial conversations with Officer Timms, while at the house, Timms indicated that he had a fight with his wife "over a drink." Sergeant A [REDACTED] also testified on cross-examination that, once Officer Timms became hysterical, he indicated that he did not "want to put you all through this" and that he had "shot [his wife's service weapon] and I tried to kill myself." Sergeant A [REDACTED] confirmed on cross-examination that, after Lieutenant Nolan arrived on the scene, Officer Timms calmed down, and the one of the officers then "uncuffed" Timms. Officer Timms was also calm during transport to [REDACTED]
[REDACTED]

Arrival of Lieutenant Nolan from IAD

Lieutenant Steven Nolan is assigned to the Internal Affairs Division Shooting Team. Lieutenant Nolan was assigned to investigate the shooting at the Timms/N [REDACTED] household on January 2, 2013. Lieutenant Nolan worked with a partner in doing so.

Lieutenant Nolan arrived at the Timms/N [REDACTED] residence just after midnight. Officer Timms was handcuffed when Lieutenant Nolan arrived.

Lieutenant Nolan interviewed Officer N [REDACTED], and Nolan observed that N [REDACTED] had a lacerated lip, and that a couple of her teeth were cracked. Lieutenant Nolan observed that Officer N [REDACTED] appeared to be intoxicated. Lieutenant Nolan then engaged in a search of the premises, which included attempting to find the cartridge casing for the bullet which had been fired. Lieutenant Nolan discovered that the bullet had gone through the first floor ceiling and into the second floor ceiling. Lieutenant Nolan also observed the kitchen area, as he was advised that an assault took place there. There was blood on the floor. At some point personnel from the Crime Scene Unit arrived, and that unit employs its own protocol for its crime scene functions. Lieutenant Nolan requested that the unit take photographs, measured evidence, and obtained blood samples. Lieutenant Nolan also observed a T-Shirt with blood on it when in a bedroom upstairs. Officer Timms informed Lieutenant Nolan that he had been wearing that shirt at some point that night. Lieutenant Nolan took possession of the shirt and subsequently submitted the shirt to a lab for review.

Lieutenant Nolan also interviewed K [REDACTED] T [REDACTED]. At a later time, Lieutenant Nolan took statements from neighbors of Officer Timms, including D [REDACTED] E [REDACTED] who as stated above had made the 911 call in the first place. In addition to the investigation Lieutenant Nolan conducted, with the help of his partner, there was also a detective

investigation. At some point, the District Attorney's Office also performed an investigation. Lieutenant Nolan read the interviews conducted by the detectives involved in the case. Lieutenant Nolan also obtained the medical records for Officer J [REDACTED], as she was [REDACTED]

[REDACTED] Lieutenant Nolan listened to the 911 calls, and also consulted with the District Attorney's office. Lieutenant Nolan was aware that, after the incident that night, Officer Timms submitted himself for [REDACTED]

Lieutenant Nolan ultimately prepared a report of the investigation which was forwarded to the Commissioner.

On cross-examination, Lieutenant Nolan acknowledged that the criminal charges advanced against Officer Timms were dismissed due at least in part to the fact that K [REDACTED] T [REDACTED] recanted her testimony. Ms. T [REDACTED] was over 18 at the time the incident occurred. Lieutenant Nolan also acknowledged that he directed that Officer Nolan's handcuffs be removed after he appeared to have calmed down. Lieutenant Nolan acknowledged that Officer Timms was cooperative with him during the course of Nolan's investigation on the night of the incident.

Commissioner Ramsey's Decision to Discharge Officer Timms

Officer Timms was discharged for conduct unbecoming a police officer and improper discharge of a service weapon. Charles Ramsey, who was at that time Police Commissioner, testified that, after reviewing the investigatory file, he opted to apply the option of Commissioner Direct Action, which enabled him to make a decision directly without going through the Police Board of Inquiry proceeding first.

In reviewing the investigatory file, the Commissioner had access to information which is not properly before me in this proceeding on the merits of the case. Specifically, it was Commissioner Ramsey's understanding from the file that Officer Timms had committed an act of domestic violence upon his wife, resulting in a couple of cracked teeth, a lacerated lip, and some bruising. This information was based upon a statement from Officer Timms' daughter, who did not testify at the criminal trial or at the arbitration hearing. In making the discharge decision, Commissioner Ramsey was also aware that Officer Timms had improperly discharged his gun by shooting a bullet into the ceiling of his house. Commissioner Ramsey testified that, in making the discharge decision, he considered the fact that Officer Timms violated protocol by failing to immediately report that he had discharged a weapon. Commissioner Ramsey was aware in making the decision that Officer Timms initially denied discharging a weapon, a statement which was directly contrary to his obligation at the time. On cross-examination, Commissioner Ramsey conceded that he had no personal knowledge of the events in question, and that he based his decision upon the information in the investigatory file. Commissioner Ramsey also conceded that he had no knowledge of events after the time period encompassed by the investigation, e.g., the fact that the daughter later recanted her statement.

Testimony of Officer Timms at Arbitration Hearing

Officer Timms graduated from the Police Academy in 1996 and began his duties as a Patrol Officer with the City in 1997. Prior to the discharge at issue here, Officer Timms's disciplinary record included only a one day suspension for disrespectful conduct toward a citizen.

In 2012 Officer Timms was living at [REDACTED] in Philadelphia, with his wife and daughter. Officer Timms' grandson was also living in the home. In September 2012, the family discovered that K [REDACTED] T [REDACTED], who was 17 at the time, was [REDACTED]. This created significant stress for the family. Officer Timms testified that his wife, Officer J [REDACTED], had a [REDACTED] problem at the time, and that the news about her [REDACTED] created additional issues on that front. In order to deal with his own struggles with the stress at the time, Officer Timms entered [REDACTED]. This [REDACTED] commenced prior to January of 2013, when the events leading to Officer Timms' discharge took place.

Officer Timms testified that, on the day in question, he and his wife both returned from their respective tours of duty. Officer Timms testified that his wife was drinking and that he went to sleep for a period of time. Upon waking, Officer Timms testified that his wife was "passed out" at the kitchen table. According to Officer Timms' testimony, his wife then woke up and Timms then asked Officer J [REDACTED] why she did not have K [REDACTED] do the dishes. Officer Timms testified that Officer J [REDACTED] then indicated that she would do the dishes, but Timms went ahead and started to do the dishes. Officer Timms testified that Officer J [REDACTED] then fell went attempting to get up from the kitchen table. As this occurred, Officer Timms testified that K [REDACTED] had come downstairs and observed her mother on the floor. Officer Timms testified that "all chaos" then ensued. Officer Timms testified that, with the events which had occurred in the last several months prior to January 2013, and the events of January 2, 2013, he felt he had hit "rock bottom."

Officer Timms testified that, at a certain point, both Officer J [REDACTED] and K [REDACTED] left the house. Officer Timms acknowledged on direct examination that he accessed

Officer J [REDACTED]'s firearm at some point after J [REDACTED] and K [REDACTED] left the house. Officer Timms acknowledged on direct examination that, after Sergeant A [REDACTED] and the other officers arrived on the scene, he initially denied shooting any firearm. Officer Timms changed his stance on that only after the bullet hole was discovered. Officer Timms testified that he was distraught at the time he discharged the firearm and did make remarks in the presence of the police officers about a desire to commit suicide. After being taken to Internal Affairs, Officer Timms [REDACTED] [REDACTED] Officer Timms was [REDACTED] [REDACTED]. Officer Timms testified that he continued to [REDACTED] and also joined a church which provided him with extremely positive support. Officer Timms testified that he also spent more time communicating with his family, in particular his daughter K [REDACTED]. As of the date of hearing in this matter, Officer Timms testified that he and his wife were separated, but still communicate in terms of handling family issues, paying bills, etc.

On cross-examination, Officer Timms acknowledged that he had an obligation under City directives to notify supervision when a gun was discharged. Officer Timms acknowledged that he did not follow this directive, and in fact did the opposite of what the directive requires when he denied discharging the firearm.

POSITIONS OF THE PARTIES (IN BRIEF)

The position of the City may be summarized as follows:

- It is undisputed that Officer Timms discharged his weapon on January 2, 2013. Officer Timms initially denied that he had done so, and only “came clean” when an officer discovered the bullet hole in the ceiling. Commissioner Ramsey testified that any discharge of a weapon is a serious matter and that is the reason that the Department requires such a discharge to be reported. Officer Timms’ failure to follow Department policy obviously subjects him to discipline, and the City urges that this alone establishes just cause for the discharge.
- It is important to note that Officer Timms was a long-term officer with the Department. This was not a rookie. He did not follow the rules by discharging the firearm, and then lied about it.
- In City Exhibit 1, the Arbitrator can see the array of evidence accumulated in the investigation, which ultimately arrived on Commissioner Ramsey’s desk. When all of that evidence is reviewed, the only possible conclusion is that the City had just cause for this discharge.
- In the unlikely event that the arbitrator does not find that just cause existed, the City strenuously urges that, before the grievant can rejoin the force, he would have to meet all the pre-hiring conditions a new officer would have to meet. Due to the facts of this case, the City urges that this would have to include rigorous psychological evaluation.
- The grievance should be denied.

The position of the FOP may be summarized as follows:

- The FOP’s hearsay objection to the documents in the investigation packets must continue to be honored here. Once that is done, and as the City candidly appeared to acknowledge in the course of its own closing statement, the domestic violence charge cannot be upheld. For the only evidence that domestic violence occurred comes from statements of witnesses who did not testify, and thus not subject to cross-examination.
- It is also important to recognize that Commissioner Ramsey considered the witness statements in relation to the domestic violence charge. Common sense dictates that, in making the decision to discharge, the Commissioner weighted the domestic violence issue much more than the charge that the grievant delayed reporting the discharge of a firearm.

- As to the firearm issue, it must be recognized that, prior to his discharge, the grievant had been employed with the City for 17 years as a police officer. During that period of time, he only had one disciplinary action, a one day suspension in 1998.
- It is true that the grievant discharged the firearm, but it must be recognized that when he did so there was no one in the house but him. He was not immediately forthcoming about it with responding police because he was distraught, embarrassed, and scared. Within a short period of time, he “came clean” and admitted that he had discharged Officer J [REDACTED]’s service weapon. He cooperated with responding police.
- It must be recognized that, due to ongoing stress in the household, the grievant essentially hit “rock bottom” on January 2, 2013. This was despite his commendable efforts to [REDACTED] for this stress prior to that date. He has gotten his life back together, and his daughter and grandson still live in the house.
- As for the level of discipline, obviously the Disciplinary Code provides significant discretion, on a case-by-case basis, based on the circumstances. The FOP submits here that the City has been unable to prove the overriding charge, related to domestic violence, and without that proof discharge on the firearm charge would be completely unfair. At best, some form of discipline on the lower end of the continuum would be reasonable.
- As to the issue of a psychological evaluation upon reinstatement, due to the length of time the grievant has been out, he would be treated as a new employee and would have such an evaluation as part of the reinstatement process. Anything beyond that, in terms of an arbitrator ordering a separate psychological evaluation, would exceed the arbitrator’s authority.
- The grievance should be sustained and the grievant should be reinstated with a full make whole remedy.

DISCUSSION

The grievant in this matter is Officer James Timms. Officer Timms was discharged by direct action of Commissioner Ramsey based on an alleged violation of two provisions of the Disciplinary Code: 1. Article VI, Disobedience, Section 6-§ 008-10 (Discharging, using, displaying or improper handling of a firearm while not in

accordance with Departmental Policy); and Article I, Conduct Unbecoming, Section 1, § 026-10 (Domestic Violence Charge).

The record reveals that, on January 2, 2013, Officer Timms was involved in a domestic dispute at his home in the Germantown section of Philadelphia. Others involved in the dispute included M [REDACTED] J [REDACTED], Officer Timms' wife, who is also a police officer; and K [REDACTED] T [REDACTED], the daughter of Timms and J [REDACTED] who was 18 years old at the time.

During the course of the dispute, Officer J [REDACTED] and K [REDACTED] T [REDACTED] (who had her baby son with her) left the house, with the idea of going to another location. Officer Timms followed them out and attempted to stop them from leaving. Ultimately, J [REDACTED] and K [REDACTED] T [REDACTED] were able to drive away. At that juncture, Officer Timms made comments about committing suicide, and went back in the house alone. He then discharged Officer J [REDACTED]'s service weapon, which was still in the house. The bullet went through the first floor ceiling and ultimately lodged in the second floor ceiling.

Officer Timms testified at the arbitration hearing. Officer J [REDACTED] and K [REDACTED] T [REDACTED] did not testify, but did provide statements in the course of the investigation. The statements provided by Officer J [REDACTED] and K [REDACTED] T [REDACTED] are included within the investigation packet marked as City Exhibit 1. Though these statements were admitted in relation to the City's duty under just cause to establish a full and fair investigation, the statements are hearsay with respect to what occurred at the house that night.

The burden of proof is on the City in this discharge case. In order to prove the domestic violence charge, the City was obliged to produce the testimony of K [REDACTED] T [REDACTED] or an admission from Officer Timms. Officer Timms denied that he physically assaulted Officer J [REDACTED] and, in her statement, J [REDACTED] also denied that he assaulted her. It is

not surprising, however, that the City did not call K [REDACTED] T [REDACTED], since she later recanted her testimony prior to criminal proceedings advanced against Officer Timms. The criminal charges were later dismissed, presumably due to a lack of evidence after K [REDACTED] T [REDACTED] recanted.

The Commissioner testified in this proceeding. In making his decision to discharge Officer Timms, he considered the initial statement of K [REDACTED] T [REDACTED], in which she provided a very graphic account of a brutal instance of domestic violence; and also alleged that Officer Timms had made threats to kill her and Officer J [REDACTED]. Had K [REDACTED] T [REDACTED] provided credible testimony at the arbitration hearing, and assuming she had not recanted her initial statement, I would most certainly find just cause for this discharge. I also have to also believe that the disturbing nature of this account was a key factor in the Commissioner's decision. In the absence of K [REDACTED] T [REDACTED] testimony at the arbitration hearing, however, I have no ability to find that her initial account actually occurred. While it is quite possible, and even likely, that something more happened than Officer Timms acknowledged in his testimony, and Officer J [REDACTED] was willing to acknowledge in her statement, there is simply no competent evidence to establish the domestic violence charge.

As to the second charge, there is no dispute that Officer Timms discharged his weapon, after Officer J [REDACTED] and K [REDACTED] T [REDACTED] (carrying her baby) left the house with the intent of heading to another location to remove themselves from the domestic dispute. Officer Timms testified that he did so in an attempt to commit suicide.

I accept as fact that, in discharging his weapon, Officer Timms was emotionally distraught, and perhaps in a state of despair, due to the domestic dispute which had just occurred, and due to cumulative stress evolving over the previous months with respect

to family issues. Officer Timms had engaged in [REDACTED] in the months preceding this incident. Officer Timms also admitted himself to [REDACTED] [REDACTED] the night this incident occurred.

Officer Timms provided no details on his testimony that this was an attempted suicide, and why if he was attempting to commit suicide the bullet ended up in a second floor ceiling. While I do believe that Officer Timms talked about the possibility of suicide in the course of the domestic dispute, and it is possible that he considered it when he went into the house, it is also possible that he rejected any suicidal thoughts and fired into the ceiling out of anger or frustration, or in an attempt to engender sympathy. From the evidence available, I am really unable to make a firm determination on these issues. Despite his fragile mental state, his initial attempt to cover up the discharge of the weapon when police responded to the scene suggests that he possessed the mental faculties to calculate a path to protect his job security or to shield himself from possible criminal charges related to the discharge of the firearm. As the cartridge casing was never found by responding police officers, it is also possible that Officer Timms located the casing and disposed of it prior to their arrival.

The Disciplinary Code sets forth a range of penalty from reprimand to discharge for an improper discharge of a firearm. Obviously the circumstances are critical in assessing where the discharge of the firearm here falls on this continuum. I have credited Commissioner Ramsey's testimony that the discharge of a firearm is treated very seriously by the Police Department. In this particular case, this is so even though Officer Timms was under mental duress at the time he did so. I accept that Officer Timms' failure to immediately "come clean" on the discharge of the weapon violated Department protocol. I have also considered the fact that, although I cannot make

specific facts on what occurred in the course of the domestic dispute, Officer Timms was involved in that domestic dispute, and the escalation of that dispute. Thus, the discharge of the firearm can be seen as the culmination of a domestic dispute for which Officer Timms bears some responsibility--perhaps overriding responsibility if I were in a position to make detailed findings of fact on what occurred. Although on the domestic violence charge Officer Timms' long tenure of employment with the City, and commendable disciplinary record, would be a non-factor if proven, on the issue of the discharge of the weapon I agree with the FOP that they deserve weight.

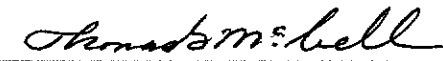
Given all the circumstances, I find that the City did not have just cause for the discharge. I find it appropriate under just cause analysis to order reinstatement of Officer Timms without back pay.

In closing statements, the parties agreed that, if I were to find a lack of discharge for this discharge, and reinstatement were thus ordered, the City would have the right in that situation to treat Officer Timms as a new hire, and include a psychiatric or psychological evaluation as part of the reinstatement process as would occur for new hires. I agree that the City has the right, and perhaps the obligation given the circumstances, to ensure that Officer Timms is mentally capable of handling police functions, which of course include carrying and potentially using a weapon. I will retain jurisdiction should the FOP believe that such an evaluation is not carried out fairly.

AWARD

The grievance is sustained in part and denied in part. The discharge was not supported by just cause. The City is ordered to reinstate the grievant to his former position consistent with the foregoing opinion. Reinstatement shall be without back pay. Seniority shall be restored as if the discharge never occurred. I will retain jurisdiction on the issue of the psychiatric or psychological evaluation.

Dated: April 11, 2016



Thomas G. McConnell Jr.

AMERICAN ARBITRATION ASSOCIATION

IN THE MATTER OF:

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AND

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CITY OF PHILADELPHIA

FINAL AWARD

In an award issued on April 11, 2016, I ordered reinstatement of James Timms, the grievant in this matter, without back pay, and with full restoration of seniority. The reinstatement order was conditioned on Mr. Timms passing a psychological or psychiatric examination. I retained jurisdiction on the issue of the psychological or psychiatric examination, and in the opinion I stated that the FOP could invoke this jurisdiction should the FOP believe that the examination was administered unfairly.

Subsequent to the award, a psychological examination of Mr. Timms took place. In a letter dated July 5, 2016, the City advised Mr. Timms that he had not passed the examination and that, therefore, he could not be reinstated as a police officer.

Having now heard the positions of the parties on the issue of the psychological examination, I conclude that there is no reason to disturb the City's conclusion that Mr. Timms cannot be reinstated as a police officer.

Dated: August 4, 2016



Thomas G. McConnell Jr.